

Manual Scavenging Act and Municipal Waste Water Workers in India - Policy and Practice

Dissertation
Post Graduate Diploma in Environmental Law

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May 2012

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Declaration

- I, N.Meenakshisundaram, Reg. No. 1403/11, hereby declare that the Dissertation entitled "Manual Scavenging Act and Municipal Waste Water Workers in India - Policy and Practice" is the presentation of my original work.
 - *"I keep Six Honest serving - men (They taught me all I knew);
Their names are what and why and when and how and where and
who" - from Rudyard Kiplings' "The Elephants Child"*
- The above saying of famous author, from who I had the essentials for my learning and enlightened my life's career achievement.
- Wherever contributions of others are involved, every effort is made to indicate this clearly, with due reference to the literature, and acknowledgement of collaborative research and discussions.
- I take this opportunity to express my profound gratitude to the Teachers of NLSIU, Shri. Dr. O. V. Nandimath and Shri. Dr. Sairam Bhatt and other Faculty members' of NLSIU for inspiring encouragement and guidance.
- My earnest thanks are also to the Management of Chennai Metropolitan Water Supply and Sewerage Board for the permission to study PGDEL at NLSIU. Further my sincere thanks to one and all the staff members of NLSUI.

N.Meenakshisundaram

ABSTRACT

This Dissertation analyses the “Manual Scavenging Act and Municipal Waste Water Workers in India Policy - Practice”. The historical, national and international context is highlighted as a way to understand policy redirections in the sector. Special focus is put on institutional arrangements with regard to networked, large scale managed sewerage services of The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 , Environment (Protection)Act and National Urban Sanitation Policy (NUSP) etc.,

India’s visionary policy’s and practice on fringe level grassroots manual scavengers and Municipal Waste Water Workers are in peril and failure in attempts of its total eradication , owing to the lack in implementation of globally accepted sanitation laws and Occupational Safety and Health acts etc.,

To begin with, development strategies were largely focused on “filling the gaps” in terms of manpower, technical and financial resources. As the sanitation challenge was increasingly arising as a matter of managing scarcity, a new thinking gradually must be evolved and emerged with significance of relevant environmental protection measures to bring Occupational Safety and Health Act (OSHA) Rules, guidelines and Regulations under Environment (Protection)Act (EPA).

The dissertation concludes that the clear space for policy alternatives in Indian Sanitation sector. Therefore, the focus point for successful outcome of Eradication of Manual Scavenging practices of municipal waste water disposal depends on the enactment of O S H Act and Regulations under Environmental (Protection) Act and the support policies, provided to dynamic Indian Sanitation disposal methods, further the other necessary points.

Keywords: Manual Scavenging, Municipal Waste Water Workers, Sewer Workers, Environment (Protection Act), National Urban Sanitation Policy (NSUP), Occupational Safety and Health Act (OSHA) and Regulations under EPA, sanitation, institutional change, policy development

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CHAPTER 1

1. INTRODUCTION

1.1 RESEARCH PERSPECTIVE AND RATIONALE

The inhuman practice of manual scavenging was banned in the country 19 years back in 1993 through passing legislation of “The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993” (EMS CDLA) in this regard by the Parliament of India. Earlier to 1993, also there have been attempts to put an end to this practice.

Indian Government since 1947 onwards had formed several committees and the Planning Commission of India also formulated many programmes in its five year plans to put an end to this practice.

The Government of India has implemented rehabilitation schemes like National Scheme for Liberation and Rehabilitation of Scavengers since 1992 and Self Employment Scheme for Rehabilitation of Manual Scavengers since 2007 along with time frame for eradicate to this practice several times after independence.

However, even though of all these efforts Lakhs of Dalits and Dalit Muslims, most of whom are women, are forced to continue in this inhuman practice.

Today this practice continues from Kashmir to Kanyakumari, those involved in manual scavenging due to the prevailing of dry latrines not only suffer from the inhuman pain of scavenging human faeces but also go through the agonizing pain and humiliation of discrimination, occupational health hazards of peril, untouchability and social exclusion .

Continuance of this inhuman practice of manual scavenging is a curse not only on those involved in this practice but on the country and putting an end to it is the responsibility of the country as a whole.

Besides, owing to the rapid urbanisation at India, a new breed of '**neo-scavenging activities**' in the form of Municipal Waste Water Workers (MWWW) – Sewer workers (SW) are arisen in dynamic daily sanitation disposal. The Operation & Maintenance of Municipal waste water disposal situation in urban centres - cities and towns, is worse, and also increasing urbanization threatens to Occupational Health and Safety of lively Municipal Waste Water Workers – Sewer Worker-unmanageable limits.

India's low sanitation was directly matched to open defecation and dry latrine existence in rural India. To address this catastrophe, Government of India launched Total Sanitation Campaign (TSC) in 1999 to achieve complete rural sanitation coverage by 2012.

Indian urbanisation, past eighty years, met exponential growth thus tends to more and more people larger and larger to towns. Between 1901 and 1991, the number of cities and large towns in India doubled, and their total population increased eight fold. Consequently, in order to tackle this, the Ministry of Urban Development, Government of India launched the Jawaharlal Nehru National Urban Renewal Mission (JnNURM) and National Urban Sanitation Policy (NUSP) in 2008.

These above all vision Policy's of Government of India is to implement sanitation programs to the Indian cities, towns and rural areas to ensure good public health sanitation and improved environment.

Yet, clear cut execution of frame work policies and programs for total eradication of 'manual scavenging' and Occupational Health Safety of Municipal Waste Water Workers are not achieved in Indian Sanitation sector of the Environment Protection. Owing to the various failures of prevailing eradication programs, a sense of urgency and utmost priority has been arisen now in India. Further several judicial strictures were ordered against this manual scavenging

practice; also many NGO's are vigorously instrumental in fighting for the complete Eradication.

Apropos, on the failures of Eradicate "manual scavenging" the matter was reviewed by National Advisory Council (NAC) during the meeting of October, 23, 2010, expressed its deep anguish and resolved and the Chairperson of NAC wrote to the Prime Minister Of India requesting the Indian Government to take necessary steps to ensure the end of this demeaning scourge in a time-bound manner.

Accordingly consequential action has been started need to bring out new law and policies to eradicate manual scavenging.

Therefore, in order to deal this, the Government of India currently attempts to bring out a new law on **"Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill, 2012"** to the significant fringe level manual scavengers and dynamic sewer workers to ensure good practices in environmental protection.

1.2. INTRODUCING RESEARCH AIM AND APPROACHES

The dissertation is an attempt to understand the problems created by inadequate Eradication of Manual Scavenging in Indian sanitation and how this could be effective?

Recognizing that the success of a proposed new policy on 'manual scavenging' and its pros' and cons' and other related outcomes of Scavengers, Municipal Waste Water Workers and scavengers' of Railways. The dissertation analyses the outlined process to achieve the outcomes and the potential importance of the same.

1.3. RESEARCH AIMS

This dissertation aims to:

- Critical evaluation of the context of the existing eradication of manual scavenging of “Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993” (EMSCDLA) and the recently proposed attempt on the new law on **“Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill, 2012”** and its role in the present situation.
- Analyze the enabling environment for efficient implementation of total eradication of ‘manual scavenging’ Objectives in India.
- Suggest vital factors for increasing the effectiveness of the policy of eradication of ‘manual scavenging’ and significantly to the lively Municipal Waste Water Workers’.
- Advocacy of need for enacting the Occupational Safety and Health Act (OSHA) and Regulations under Environment (Protection)Act (EPA) for the fringe level grassroots Municipal Waste Water Workers/ Railway Sanitary workers etc.,

1.4. SPECIFIC RESEARCH QUESTIONS

- ❖ The specific research questions the report addresses are:
- ❖ What are the global laws of Occupational Health Safety Act on Environment Protection and how are they implemented /enforced?
- ❖ What is the situation of comprehensive sanitation law and monitor Mechanism for Indian sanitation?
- ❖ What are the laws / policies addressing the provision for lively Municipal Waste Water Workers and scavengers in Railways?
- ❖ What is the effectiveness of these policies?

CHAPTER 2

2. MANUAL SCAVENGING AND MUNICIPAL WASTE WATER WORKERS

2.1. MANUAL SCAVENGING

2.1.1 HISTORY OF MANUAL SCAVENGING:

The origins of manual scavenging:

There is some contention concerning the initiation of the practice of manual scavenging and several authors, depending on their different political leanings, blame the *Manusmṛiti*, the Mughals and/or the British for this.

B R Ambedkar, the author of India's constitution and himself a Dalit, traces the practice of scavenging and its implications of social abuse to 600 AD (Shyam Lal, 1984). The *Narada Samhita*, a post-Vedic text defines cleaning tasks as unclean and also allocates the disposal of human faeces as one of the 15 duties for slaves. In the *Vajasaneyi Samhitas*, Chandalas or Sudras, were referred to as slaves responsible for disposal of night soil, or human faeces.

Although the early Harappan civilisation had an extensive network of underground drainage and sewerage, subsequent urbanisation made the use of dry latrines more common. The ready availability of a specific group of people, traditionally allocated to the task of filth removal allowed this practice to flourish. There was neither the technical motivation nor the need to innovate for an appropriate sanitation technology.

A Government of India report (1992) identifies that the practice of manual scavenging was introduced by the Mughals. The need for female seclusion and privacy was emphasised in Muslim culture and this gave rise to the need to ensure somewhere private for women to defecate, and hence the need to dispose of this away from the home; but this view seems to neglect the history and culture of the Hindu caste system. Gadgil (1952) and several others assert that the practice of manual scavenging was aggravated in India as a result of the large-scale urbanisation, primarily during the period of Mughal and British colonisation.

Legitimising and systematising the practice of manual scavenging by Dalit groups, the British created official posts of manual scavengers in all the key institutions: the Municipalities', the army, the railways, the civil courts and the industries and specifically hired Valmikis or Methars for this task. Ramaswamy (2004) mentions that one of the first areas to be provided with dry latrines and migrant Telegu scavengers (from Andhra Pradesh) was the Kolar Gold Fields in present day Karnataka.

Whatever the reality of their origin, the very specific tasks of cleaning and removing animal and human faeces, sweeping roads and cleaning surface drains, removal of human and cattle corpses, and rearing of scavenger pigs continue to be performed by the Scavenging community of Indian lower castes.

In India it is difficult to determine when the manual scavenging was actually started. Because it relates to the social order that prevails in India. But an organized manual scavenging should have been started in British India when municipalities and local bodies were formed.

2.1.2 GLOBAL HISTORY

In Europe manual scavenging was said to have started in 1214 AD when the first public toilets were appeared. Due to the changes during the years, the water closet was invented by John Harrington in 1596 and in 1870, S.S. Helior invented the flush type toilet, and it became common in the western world. This caused other types of toilets to disappear in the western world. Thereafter, in mid 1950,s all surface toilets were abandoned in Western Europe.

2.1.3 MANUAL SCAVENGING PRACTICE:

Manual scavenging : The obnoxious and inhuman occupation of manually removing night soil and filth using their hand is called 'manual scavenging'. The occupation has remained intact with the dalit communities dictated and forced upon

by the caste- system. The forms of manual scavenging and cleaning of human excreta have changed over the period of time both in rural and urban areas. However, the practice of inhuman and derogatory occupation of manual scavenging continues under different forms and manner.

According to “THE EMPLOYMENT OF MANUAL SCAVENGERS AND CONSTRUCTION OF DRY LATRINES (PROHIBITION) ACT, 1993”² Manual scavenging is defined as:

“Manual scavenger” means a person engaged in or employed for manually carrying human excreta and the expression “manual scavenging” shall be construed accordingly.

Forms of manual scavenging:

There are different ways and forms in which the people are forced to carry out cleaning of manual scavenging viz., Wada latrines, Dry Latrines, Dabba (Jajroo) box collecting, Wadoliya (back yard defecation), Open defecation, Kharkua (pit or well), Man- hole at the sewer lines, cleaning of Septic tanks and Flush latrines etc.,

2.2 MUNICIPAL WASTE WATER DISPOSAL:

During the beginning of 20th Century, Colonial British to get rid themselves from deadly cholera and other water borne diseases were established sanitation programs of underground sewage collection and disposal arrangements in major habitats of municipal cities and towns. Subsequent after independence, underground disposal of sewage disposals are also emerging in Indian towns and cities’.

In order to operate and maintain the increased underground sewer systems a *neo - breed* of manual scavengers of Municipal Waste Water Workers or Sewer Workers are begin to arousing in Indian Municipalities” and other local bodies’. These sewer workers are being utilised in removal of clogged gutters, storm water drains, sewer manholes and septic tanks etc., Owing to the urbanisation in India, numerous manifolds of sewer workers are getting arising lively and their occupation is in doldrums.

2.3 ELIMINATION OF MANUAL SCAVENGING:

Indeed the developed western countries and all other developed nations abandoned the manual scavenging long back, this 'inhuman occupation' in India, yet are in practice.

It is very hard to digest. It is a very common scene in our country that men and women are being used to clean streets , the drainage, under water ways, 'manholes' sewer connections, septic tanks, etc (which are loaded with the human excreta) and to carry them away. It is a daily scene in major railway stations, bus terminals and hospitals that men and women clean the human excreta with bare hands equipped with just broom sticks.

3. MANUAL SCAVENGERS IN INDIA

Manual scavengers are the most excluded and exploited communities among Dalits. They are the lowest in Hindu caste hierarchy and therefore suffer manifold social exclusion at the hand of caste Hindu and state's functionaries like the municipal officials, police, railways and defence. They are found in almost all cities of India---cleaning, sweeping the streets and manually engage in carrying out night-soil. Women are the worst victims as they constitute more than eighty per cent of work force of manual scavengers. Apart from social stigma, work of scavenging is lowly paid, it causes health problems and many manual scavengers have died during cleaning up the sewage.

There are different caste name for manual scavengers like Balimiki, Bhangis, Mehatar, Lalbegi, Chuhara, Mira (UP,MP,Bihar,Punjab, Maharastra) Hadi(West Bengal), Paki(Andhra Pradesh), Thotti(Tamil Nadu) etc.

Their number is not counted separately under census because they fall under the legal category of Scheduled Castes; however, their total population would not less than 13 lakhs.

As per the annual report of the Ministry Social Justice and Empowerment (Government of India 2009), there are 7, 70,338 manual scavengers and their dependents in India. The highest number of manual scavengers was in Uttar Pradesh(2,13,975) followed by Madhya Pradesh(81,307), Maharashtra(64,785), Gujarat(64195), Andhra Pradesh(45,822) and Assam(40,413). The same report of 2009 mentioned that a total of 4, 27,870 manual scavengers have already been assisted under the National Scheme of Liberation and Rehabilitation of Scavengers (NSLRS) and therefore ineligible for availing any assistance. The remaining number of manual scavengers are yet to be rehabilitated is 3, 42,468.

While the official report asserts there are no manual scavengers are found in the states of Andhra Pradesh, Punjab and Chhattisgarh, since all of them have been rehabilitation under the policies and schemes meant for them; studies of Gita Ramaswamy and experiences of rights activists and community organization like the Safai Karamchari Andolan reveals that state machinery hide the inhuman practice in those states as the manual scavengers are very much found in above mentioned states.

The national commission for safai karamcharis, a statutory body, pointed in its reports to the use of dry latrines and continued employment of manual scavengers by various departments of the Union of India, particularly the railways, the department of defence and the ministry of industry. While states like Haryana deny employing manual scavengers, other states like Andhra Pradesh employ them through municipalities. The practice is on in almost all states, including Bihar, Maharashtra, Jammu & Kashmir and even Delhi. The Indian railway is one of the largest employers of manual scavengers.

4. MEASURES TAKEN BY GOVERNMENT SO FAR TOWARDS ELIMINATION OF MANUAL SCVENGING

4.1. LEGISLATION

- Act ('the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993') does not prohibit dry latrines and manual scavenging in a direct fashion. It operates after State Government issues a notification fixing a date for enforcing the provisions prohibiting employment of manual scavengers and dry latrines in the specified area. The notification itself can only be issued after giving a notice of ninety days, and only where 'adequate facilities for the use of water-seal Latrines in that area exist'.
 - Act on Scheduled caste and Scheduled Tribe (Prevention of Atrocity) act, 1889. under the section of 3(1)(VI) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'beggar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;
 - Act "Bonded Labour System (Abolition) Rules, 1976.
-

4.2. CONSTITUTIONAL SAFEGUARDS:

The following constitutional safeguard guarantees are given:

- Article 14: Equality before law. (Right to Equality), Article 16: (2): Equality of opportunity in matters of public employment, Article 19: (1) (g): Right to Freedom (Protection of certain rights regarding freedom of speech), to practice any profession, or to carry on any occupation, trade or business, Article 21: Protection of life and personal liberty, Article 23: Prohibition of traffic in human beings and forced labour etc.,

4.3. REHABILITATION MEASURES BY GOVERNMENT:

From the central level the following are the schemes which are enacted

- National Action Plan for Total Eradication of Manual Scavengers by 2009.
 - The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993,
 - Integrated low-cost sanitation (ILCS) scheme
 - Self-employment scheme for rehabilitation of manual scavengers (SRMS).
-

4.4 AIMS AND OBJECTIVES OF THE EMPLOYMENT OF MANUAL SCAVENGERS AND CONSTRUCTION OF DRY LATRINES (PROHIBITION)ACT, 1993

The Act, 1993 is not only penal but a social legislation, intends to protect and restore the dignity of manual scavengers. The main objectives of the law are to prohibit employment of manual scavengers, construction or continuance of dry latrine and for the regulation of maintenance of water-seal latrines. Since sanitation being part of state subject, therefore, originally it came into force in six states and all the Union Territories under clause (1) of Article 252 of the Constitution of India. While as on 2007, 19 States and all UTs have adopted the Act, 1993[19]; nine States are yet to adopt the Act.

4.5 'ILO'INTERVENTION

ILO- International Labour Organisation- is the only international organization which operates on a 'tripartite' basis. Since its inception, worker and employers

organization have worked side by side with government in a three- way or tripartite basis.

To put its aims and objective into practice, the ILO formulated and adopts different standards (International agreements such as conventions), resulting from a process of consensus among its members on a specific issue.

Discrimination (Employment and Occupation) Convention no.111 (1958) which deals with issue of work-related discrimination and promotes the equality in employment and occupation and also this convention states that Government needs to adopt the laws for combating discrimination through creation of educational programmes for equal opportunity, adoption of national policy on equal opportunity, full cooperation with employers and workers organization. This convention also states government to establish a national agency on equal opportunity along with repeal of inconsistent laws and practices. Social origin is one of the grounds of prohibited discrimination and ratified by India (1960).

Regarding forced labour, ILO has adopted Forced Labour Convention (1930) to suppress the use of forced or compulsory labour in all its forms.

As Dalits are mostly, even today are engaged in Caste based occupations like Manual Scavenging, this convention states the government is requires to take action through carrying out regular inspections of labour conditions, by ensuring punishments and making the forced or compulsory labour as a penal offence. The most important thing is that the Abolition of Forced Labour Convention (1957) deals with the elimination of forced labour which states that effective measures should be taken on the part government for immediate and complete abolition of forced or compulsory labour. Planning Commission of India was developed the National Plan to eradicate the practice of the Manual Scavenging by 2007, but it could not be possible to it, so now it has developed the National Plan to eradicate Manual Scavenging by 2009. As mostly Child Labourers in India are Dalit Children. Since beginning, Child labour has been a major issue for the ILO and it has adopted the different conventions for protecting children. Thus, the principal aim of the ILO is to

eliminate child labour completely for which it has adopted two conventions the Minimum Age Convention (1973) and Worst Forms of Child Labour (1999), both aims to abolish child labour and prohibit and eliminate the worst forms of child labour like sale and trafficking of children, child prostitution and work which harms the health, safety or morals of the children. This convention states government to specify a minimum age limit for children to enter the workforce, to designate of competent authority to implement the convention, to enforce of penal sanctions.

4.6 PRESENT STATUS

The Present status of the eradication of 'manual scavenging' in India is in the stage of failure even with relatively having visionary policies' of statues of Act, rehabilitation measures, converting the dry latrines under Total Sanitary Campaign (TSC) Etc.,

As such, it prevails India widely and this activity of most degrading surviving practice involves mostly women, but also men and even children gathering human excreta from individual or community dry toilets with bare hands, brooms or metal scrapers into wicker baskets or buckets and then carrying this on their heads, shoulders or against their hips into dumping sites or water bodies.

Others are similarly employed to clear, carry and dispose excreta from sewers, septic tanks, drains into which excreta flows and railway lines.

Besides the manual scavengers and sewer workers are being in the threat of fatality of occupational accidents of asphyxiation deaths and innumerable occupational diseases'. Even in most of the situations occupational hazards of deaths owing to scavenging activities are reported, recorded and brought to light properly.

The real situation may even worse than the above facts. Eradication of manual scavenging practice still have not resulted its targets and exists as the most degrading surviving practice of untouchablity in India.

Hence Eradication of manual scavenging is most appropriately considered a policy priority in India and this dissertation discuss the intricacies and need of the law response to this issue.

CHAPTER 3

3. METHODOLOGY

3.1. APPROACH OF RESEARCH

The research is mainly aimed at understand the eradication of “Manual Scavenging and Municipal Waste Water Workers - Sewer Workers – in India Policies Practice” and its achievability of expertise in the social milieu of the cities, towns and rural through qualitative research approach.

Qualitative research approaches have conventionally been favoured when the main research objective is to improve our understanding of a fact, mainly when this fact is intricate and deeply rooted in its context. It involves the study and analysis of several sites using namely cross-case review and reason building techniques to analyze data. Its many methods and techniques have helped researchers get a better grasp of a variety of management situations (Josée Audet and Gérald d'Amboise, 2001).

Methodology →	<i>Literature Review</i>	Analysis of Eradication of Manual Scavenging and Municipal Waste Water Workers Policies of different countries
	<i>Secondary Data</i>	Data on Manual Scavenging Act and its implementation
	<i>Primary Data</i>	Visit to cities preparing CSPs as part of Manual Scavenging Act

Figure: 1 Step approach of research methodology

A three-step methodology was followed for this research, comprising literature review, and collection and analysis of secondary as well as primary data.

Each of these steps of the methodology followed for this study is described in detail Below In order to achieve the research aim and objectives, the methodology adopted can be categorized in the following sections.

3.2. LITERATURE REVIEW

A survey of literature on Manual Scavenging Act and Municipal Waste Water Workers sanitation policies on Occupational Safety and Health Act (OSHA) of different countries was carried out to understand the involved different objectives and variety of approaches for achieving liberation of manual scavengers and Occupational Health and Safety rules coverage under EPA and its sustainability in India has been discussed.

3.3. SECONDARY DATA

Secondary data have been collected on each component of Manual Scavenging Act's input, output process and outcome – and the progress towards the overall goal of achieving universal Environmental sanitation coverage has been analyzed.

3.4. PRIMARY DATA

3.4.1. DATA COLLECTION

Data Collection and Analysis illustrates simply and non-technically the techniques and approaches that are used in research projects. The data collection was primarily classified into two categories – primary data and secondary data.

Primary data comes from original sources and are collected especially for the task at hand, and in person. It included the sampling and interviewing of the involved stakeholders, as described earlier in sampling and interviewing methodologies.

The advantages of secondary data are that they provide a context, may provide Validation for primary data, and may act as substitute for primary data, when it is simple not possible to collect data for reasons of access, cost or time. Secondary data included the study of historical data like journal publications and other relevant sources, internet research with regard to understanding the global and local scenarios, legislations with regard to manual scavenging, related case studies of other technological interventions Occupational Safety Health Act rules and regulations and other experiences.

3.4.2. INTERVIEWING / DISCUSSIONS

Semi-structured interviews were designed to gather detailed, qualitative descriptions of how programs operate and how stakeholders perceive them. The advantage of semi structured interviews is the greater degree of informality involved, leading to a stronger rapport. Secondly, the interviewee's perspective is more easily expressed, rather than the perspective of the researcher being imposed. Thirdly, the interviewee has the opportunity to express themselves in language natural to them, instead of being forced to fit their language within the context and concepts of the study. Finally, the conversation medium of the in-depth or open-ended interview affords the interviewee equal status to the researcher, thereby enhancing rapport and trust.

Case reference studies were conducted one-on-one. Questions were generally open-ended and responses are documented in thorough, detailed notes. Case studies were conducted with the stake-holders involved – the Manual scavenging of ULB, the local community, the technology provider and the plant operators. Questionnaires were prepared in a semi-structured manner to gather specific information from participants and also to allow new questions to emerge in the discussion. Questions were kept simple, with a logical sequence to help the discussion flow. Questionnaires were administered in person over the phone, or via email/Internet.

3.5. LIMITATION OF THE RESEARCH

In any research it is necessary to acknowledge the limitations intrinsic to the system of data collection and analysis used. Firstly, it is clear the great strength of qualitative strategies is their usefulness in uncovering deep responses. The corollary of this strength, however, is that qualitative research is severely limited in its ability to ensure a broad coverage of responses.

The primary limitation of the research is that the data is qualitative and thereby subjective. Qualitative research is committed to analysis of data that incorporates the context of data collected in its interpretation. But context is a dynamic concept. The general implications for use of secondary data have had specific implications for my research. Context had to be considered at two levels: the context of the interviewee who provide the secondary data and the new context into which the data record is being applied. All interviews and secondary data are very site-specific and this has posed a challenge in making a conscious judgment of the data, and its relevance in the present research. Subsequently, qualitative data does not lend itself to statistical manipulation.

As a result, data obtained from qualitative sources are subject to lengthy analysis and discussion, but are rarely statistically representative in any way.

CHAPTER 4

4. LITERATURE REVIEW

4.1. OUTLOOK OF INTERNATIONAL OCCUPATIONAL SAFETY AND HEALTH ACT and REGULATIONS

4.1.1. OCCUPATIONAL SAFETY AND HEALTH ACT and REGULATIONS IN USA

United States of Americas' Department of Labour had formulated one primary federal law in **Occupational Safety and Health Act** (OSHA) and which governs occupational health and safety in the private sector and federal government in the United States. It was enacted by Congress in 1970; its main goal is to ensure that employers provide employees with an environment free from recognized hazards, such as exposure to toxic chemicals, excessive noise levels, mechanical dangers, heat or cold stress, or unsanitary conditions. The Act can be found in the United States Code at title 29, chapter 15.

The Occupational Safety and Health Act of 1970 (OSH Act), was passed to prevent workers being killed or seriously harmed at work. This law created the Occupational Safety Health Administration, which sets and enforces protective work place safety and health standards. OSHA also provides information, training and assistance to employers and workers. Under the OSH Act, employers have the responsibility to provide a safe work place.

RIGHTS AND RESPONSIBILITIES

Employers must: Follow all relevant OSHA safety and health standards. Find and correct safety and health hazards. Inform employees about chemical hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods. Notify OSHA within 8 hours of a workplace fatality or when three or more workers are hospitalized. Provide required personal protective

equipment at no cost to workers. Keep accurate records of work-related injuries and illnesses. Post OSHA citations, injury and illness summary data, and the OSHA "Job Safety and Health - It's The Law" poster in the workplace where workers will see them. Not discriminate or retaliate against any worker for using their rights under the law. Employers must pay for most types of required personal protective equipment.

Employees have the right to: Working conditions that do not pose a risk of serious harm. Receive information and training (in a language workers can understand) about chemical and other hazards, methods to prevent harm, and OSHA standards that apply to their workplace. Review records of work-related injuries and illnesses. Get copies of test results done to find and measure hazards in the workplace. File a complaint asking OSHA to inspect their workplace if they believe there is a serious hazard or that their employer is not following OSHA rules. When requested, OSHA will keep all identities confidential. Use their rights under the law without retaliation or discrimination. If an employee is fired, demoted, transferred or discriminated against in any way for using their rights under the law, they can file a complaint with OSHA. This complaint must be filed within 30 days of the alleged discrimination.

Besides, the OSHA acts as a administration to formulate rules and regulations and monitoring activity. More over this agency sets guidelines, training programs etc., For the sewerage sector, the OSHA set down safety practice standards, regulations and manuals for Confined Spaces Regulations 1997 and Approved Code of Practice, Regulations and guidance confined entry such as sewer manholes for cleaning by mechanical equipments. These rules and regulations of safety practices of sewers are regularly followed by the respective state agencies thus to protect the workers from occupational hazards of sewer operation and maintenance work.

4.1.2 HEALTH AND SAFETY AT WORK etc., ACT, U. K.,

The **Health and Safety at Work etc. Act 1974** (c 37) (abbreviated to "HSWA 1974", "HASWA" or "HASAWA") is an Act of the Parliament of the United

Kingdom that as of 2011 defines the fundamental structure and authority for the encouragement, regulation and enforcement of workplace health, safety and welfare within the United Kingdom.

The Act defines general duties on employers, employees, contractors, suppliers of goods and substances for use at work, persons in control of work premises, and those who manage and maintain them, and persons in general. The Act enables a broad regime of regulation by government ministers through Statutory Instrument which has, in the years since 1974, generated an extensive system of specific provisions for various industries, disciplines and risks. It established a system of public supervision through aids the creation of the Health and Safety Commission and Health and Safety Executive, since merged, and bestows extensive enforcement powers, ultimately backed by criminal sanctions extending to unlimited fines and imprisonment for up to two years.

The Act lays down general principles for the management of health and safety at work, enabling the creation of specific requirements through regulations enacted as Statutory Instruments or through codes of practice. the Management of Health and Safety at Work Regulations 1999, the Personal Protective Equipment (PPE) at Work Regulations 1992 and the Health and Safety (First-Aid) Regulations 1981 are all Statutory Instruments that lay down detailed requirements. It was also the intention of the Act to rationalise the existing complex and confused system of legislation (section 1(2)).

According to the act provisions, two corporate bodies of Health and Safety Commission and Health and Safety Executive had been established.

The **Health and Safety Executive (HSE)** is a non-departmental public body with its headquarters in Merseyside, England. It is the body responsible for the encouragement, regulation and enforcement of workplace health, safety and welfare, and for research into occupational risks in England and has since absorbed earlier regulatory bodies such as the Factory Inspectorate and the Railway Inspectorate though the Railway Inspectorate was transferred to the Office of Rail Regulation in April 2006. As part of its work HSE investigates industrial accidents,

small and large, including major incidents such as the explosion and fire etc., HSE focuses bring out regulations of safety and health of works and workers. HSE formulated regulations for the sewer operations, confined space entry programs rules and regulations for the benefit of occupational safety and health of sanitary workers during the O&M works.

HSE regulations for confined space entry gives guidelines to the workers, supervisors and employer regarding safety aspects , methodology to overcome risk, safe entry programs, risk prevention methods ,and preventive /emergent situation tackling etc.,

4.2. OUTLOOK OF NATIONAL OCCUPATIONAL SAFETY AND HEALTH ACT and REGULATIONS

4.2.1. OCCUPATIONAL SAFETY AND HEALTH ACT and REGULATIONS IN INDIA

Planning Commission had set up a Working Group to prepare the Xth Five Year Plan on Occupational Safety and Health at the workplace and according to the extracts from the REPORT OF THE WORKING GROUP ON OCCUPATIONAL HEALTH AND SAFETY for the Tenth Five Year Plan 2002-2007 the following were observed .

As per the Constitution of India a number of Legislations have been framed dealing with the safety, health and welfare of the workers employed in the organized sector. However, due attention has not yet been given to the workers in the unorganized sector. For the first time this report has not only attempted to fill up this gap but has also endeavoured to frame guidelines which could help in drawing up a coherent national policy on Occupational Safety and Health and to enact a general legislation on Occupational Safety and Health applicable to all workplaces including the unorganized sector in the country.

Constitutional Provisions: The Constitution of India has specific provisions for ensuring OSH for workers in the form the three Articles 24, 39 (e and f) and 42. The

statutes relating to OSH are broadly divided into three- statutes for safety at workplaces (eg. Factories Act, 1948 and Mines Act, 1952), statutes for safety of substances (eg. Indian Explosives Act, 1884), and Statutes for safety of activities (eg. Radiation Protection rules under the Atomic Energy Act).

There are comprehensive safety and health statutes for regulating safety and health of persons at work exists only in respect of four sectors – namely, factories, docks, mines and construction sectors, however, these legislations are highly sector-specific. The approach in the statutes is to lay down specific and detailed requirements to prevent risk of injuries in specific operations or circumstances. This lacks uniformity and a well coordinated approach to safety and health in all sectors of the economy.

There is a strong need for a general (umbrella) legislation covering safety and health aspects of workers employed in all sectors of economy irrespective of the number of employees employed in those units. There is a trend all over the world to enact legislation on the subject, which has general applicability to all work-sites. This legislation should be applicable to factories, mines, plantation, ports, construction, unorganized sectors and also to such categories of workplaces even sewer cleaning activities or work activities as may be notified by Central Government.

The terms of reference of the working group were: a) To review the existing set up for occupational safety and health in the work place; b). To assess weaknesses of the existing set up and suggest ways to improve it; c). To suggest ways to improve occupational safety standards in the large segments of work force not included so far; d). To examine the efficacy of the administrative machinery under the State Governments to ensure occupational health and safety to the workers in factories and other non-agricultural establishments through the institution of “factory inspector” which exists under the Factories’ Act? E). To suggest such other measures as are necessary to ensure occupational health and safety of workers in (i) the agricultural occupations and (ii) non agricultural occupations in particular, workers in non-registered factories, road transport, shops, eating establishments, printing, dyeing, chemical storage and handling, etc., f). To examine the efficacy of regulations

concerning the health and safety implemented by Government Departments other than “Labour” such as Explosive Act, Boiler Act, etc.

Accordingly the committee of working group upon deliberations made General Recommendations and listed below:

National Policy on Occupational Safety and Health:

A coherent National Policy on Occupational Safety and Health of workers employed in all sectors of the economy to be prepared through tripartite consultations.

General Legislation (Umbrella) on Occupational Safety and Health:

A large number of OSH Legislations are applicable in a fragmented manner and has been developed in a piecemeal manner resulting in duplication in some areas and gaps in others. There is no single unified legislation which can take care even of the basic responsibilities for the OSH in all the sectors as is the practice adopted by most of the developed countries and many of the developing countries recently.

It is therefore proposed to bring in a General Legislation on OSH. This will help in reduction in multiplicity of enforcement agencies and will have proper coordination among them while providing a focus on OSH measures in industry.

Apex Body on Occupational Safety and Health:

At present the sector specific enforcement agencies are working in three specific areas and no agency is available which cover safety and health of the workers in unorganised sectors. Thus there is need for an Apex body at the national level to deal with matters connected to safety and health of workers employed in all sectors of the economy.

National Accreditation Agency :

In order to integrate Occupational Safety and Health in the manufacturing/processing/service sector, there is need for creation of an independent national level Accreditation Agency consisting of eminent professionals for establishment of national standards on OSH and development of an audit mechanism for assessing effectiveness of OSH in industries, ports, mines and unorganized sectors by external safety audits.

Existing set up of Occupational Safety and Health set up in the work place in India:

Constitutional Provisions: The salient features of the national policy on occupational safety and health are derived from the Constitution of India.

Article 24 of the Constitution prohibits employment of child below 14 years for work in any factory or mine or in any hazardous employment.

The Directive Principles of State Policy which are in the nature of guidance for legislative and executive action provide safeguards to workers.

Article 39 requires the State to direct its policy to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter a vocations unsuited to their age or strength.

Article 42 directs the State to make provision for securing just and humane conditions of work and maternity relief.

Thus under the Constitution, it is imperative that measures should be taken to ensure that all the workers irrespective of their place of employment are assured of Occupational Safety and Health.

The Seventh Schedule of the Constitution lists the jurisdiction of the Centre and the State Governments to legislate in particular subject matters. In terms of List-I under this Schedule, the Central Government is exclusively authorized to make laws for regulations of labour and safety (vide Item No.55 in the list) and for safety of workers employed in major ports (vide Item No. 27 in the list). In the list of Concurrent subjects welfare of labour (vide No. 24 in the list) and factories (vide No. 34 in the list) have been included.

It is, therefore, necessary that the Central Government reviews the statutes of Occupational Safety and Health and takes appropriate measures for improvement of working conditions.

OSH Policies on Waste Management Sector:

Waste management is a function of urban local bodies. Union Ministry of Urban Development and Poverty Alleviation and the State Governments deal with the legislation governing waste management in urban areas. Local civic authorities in some states deal with collection and disposal of wastes. However, these laws are

by no means comprehensive. A new set of rules, Municipal Solid Waste (Management & Handling) Rules 2000 was promulgated by the Ministry of Environment and Forests. These rules cover the urban local bodies of the country and have fixed the responsibilities of the State Governments, Central Pollution Control Board, State Pollution Control Boards and Municipal authorities. These rules have come into force in October 2000 and need to be vigorously followed up vis-à-vis implementation.

Waste generation ranges from 200 gms to 500 gms per capita per day in cities ranging from 1.0 lakh to 50 lakhs population. An estimate places the solid waste quantity generated every year in excess of 20 million tonnes. Epidemiological studies show that the workforce engaged in waste management services are exposed to high health risks and frequently suffer from respiratory tract infections, gastro-intestinal problems, worms, etc. Indian domestic waste contains human excreta, bio-medical waste and sometimes other toxic and hazardous wastes. Improper management of waste can therefore pose big problems for the entire populace.

Need for National Policy on Occupational Safety and Health:

Due to proliferation and increasing severity of hazards in different walks of economic activity (e.g. use of hazardous substances, outsourcing of hazardous work and harmful effects of widely used new technologies) and Government's declared objective to keep pace with international trends and need for projecting a positive image internationally as a country concerned about the health and safety of its working population, it is now appropriate that a National Policy on OSH is formulated and declared by the Government.

Experience shows that even if no additional legislative initiatives can be taken by the Government due to practical constraints, a Policy Declaration acts as a framework for guidance and action and helps in promoting voluntary actions at different levels.

In fact the need for a coherent policy on OSH was internationally recognized as early as in 1981 as reflected in Article 2 of the ILO Convention No.155 on Occupational Safety, Health and Working Environment.

Need for a General Legislation on Occupational Safety and Health : Increasingly, there is a trend all over the world to enact legislation on the subject which has general applicability to all work-sites. The legislation deals with matters of principles and empowers the government to make detailed regulations, codes of practice and standards for specific work-sites or work activities. The advantage in dealing with technical matters through regulations is that these can be revised or updated from time to time without delay and the procedural formalities involved in statutory amendment. Important examples of such general enabling legislation are the Occupational Safety and Health Act, 1970 of the USA and the Health and Safety at Work etc. Act 1974 of the U.K.

The question of enactment of a similar piece of legislation in India has been under consideration of the Central Government for long time. A Working Group was constituted in the Ministry of Labour in 1983 for the purpose, comprising representatives of the relevant Ministries of the Government. The working Group considered various forms of general legislation and enforcement systems in different countries.

It was felt that the U.K. model of having a central autonomous body, namely, the Health and Safety Commission and the unified enforcement agency, namely, the Health and Safety Executive would not be appropriate in view of our federal structure and the tradition of enforcement of safety provisions of law in different sectors of activities by different inspectorates.

The Group favoured the course of framing a general law but leaving the administration to existing departments of Government concerned. In order to ensure effective administration and coordination of various functions under the new law, it, however, recommended the setting up of a Safety and Health Advisory Board.

At present, comprehensive safety and health statutes for regulating safety and health of persons at work exists only in respect of four sectors – namely, factories, docks, mines and construction sectors. In addition, there are number of other statutes for regulating safety in particular activities, operations, sectors such as transport, storage and handling of explosives, petroleum, insecticides, radio-active materials, installations, use and maintenance of boilers and unfired pressure vessels

and operations of Railways, Shipping and Aviation. Thus, the approach in the existing statutes for regulating safety at work is to lay down specific and detailed requirements to prevent risk of injuries in specific operations or circumstances. This approach lacks uniformity and well-coordinated approach to safety and health in all sectors of the economy.

There are also problems regarding the procedures involved in amending these statutes. The administrative procedure to effect amendments to these statutes is so long drawn that quite often there is a time lag between the notification of the amendment and existence of the situation requiring such amendments. Further, these amendments cater only to particular problems.

Thus, the Working Group feels that there is a need for a general legislation covering safety and health aspects of workers employed in all sectors of economy irrespective of the number of employees employed in those units.

Apex Body on Occupational Safety and Health :

At present, there is no agency or department of the Government of India exclusively dealing with matters of occupational safety and health. DGFASLI is dealing with safety and health of workers employed in factories and ports, whereas, DGMS deals with safety and health of miners.

There are other departments under the Ministry of Labour which deal with safety and health issues in different sectors such as CLC for construction sector, etc.

Also, there is no agency, which covers safety and health of workers in unorganized sectors.

Thus, there is a need for an apex body at national level to deal with matters connected to safety and health of workers employed in all sectors of economy. This body may be designated as Apex Body on Occupational Safety and Health. The Apex Body on Occupational Safety and Health will assist the Government of India in the implementation of National Policy on Occupational Safety and Health.

It would also coordinate the activities relating to enforcement of provisions under General Legislation on Occupational Safety and Health. It would coordinate with all departments of Governments, dealing with matters connected to occupational safety and health in the implementation of National Policy.

Lack of Enforcement Strategies:

By and large, the enforcement agencies have not developed enforcement strategies through collective deliberations and analysis of the situations. Inspections have been generally left to the individual Inspectors without much of guidelines whereas the major issues concerning a particular sector can only be resolved through the direction and initiative of the enforcement agency as a whole with commitment from the highest level. For example, the Dangerous Machines (Regulation) Act which provides for the regulation of trade, commerce, production, supply, distribution and use of the dangerous machines in agriculture, can only be enforced effectively if a strategic initiative is taken at the State and National levels to involve the manufacturers of such machines and seek their commitment, not to bypass the built-in safeguards for cutting costs. Thus, there is an imperative need for formulating well thought out enforcement strategies for different legislations to address the major concerns.

Suggestions to improve Occupational Health and Safety in the large segment of work force not included so far: Waste Management:

In view of the fact that very little or no legislative cover is available for managing wastes, inter-sectoral involvement and closer co-ordination with implementing agencies need to be established. It must be kept in mind that awareness and proper actions by the parties involved and understanding regarding hazards arising out of this is a critical success factor vis-à-vis good management of wastes.

A sustained effort towards generating awareness through participation of citizens' and other key players need to be mounted on a priority basis. As NGOs' have a better outreach to the key players in this area, their involvement will go along way in mitigating this problem.

Efficacy of regulations concerning the health and safety implemented by Govt. Departments other than Labour such as Explosives Act, Boilers Act.;; Regulations Concerning Safety and Health:

The statutes concerning safety and health of workers employed in various workplaces, as well as for abatement of pollution of environment are listed below:

(i) The Factories Act, 1948 (ii) The Dock Workers (Safety, health and Welfare) Act, 1986 (iii) The Plantation Labour Act, 1951, (iv) The Mines Act, 1952 (v) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (vi) The Workmen's Compensation Act, 1923 (vii) The Employees State Insurance Act, 1948 (viii) The Shop and Establishment Acts are implemented by the Ministry of Labour at central level or by department of Labour at state level.

The various statutes concerning safety, health and environment, not implemented by department of labour are briefly described below:

The Water (Protection and Control of Pollution) Act, 1974 and the Water (Prevention and Control of Pollution) Rules 1995.

These Rules are enacted for prevention and control of pollution in water courses. These are applicable to all places of work including factories covered under the Factories Act. The Central and State Pollution Control Boards are the enforcing agencies. Some of the duties of the enforcement authorities include:

- providing technical guidance , monitoring, analysis and conducting investigations regarding water pollution , setting standards for industrial effluents in water.

The enforcement is carried out by state boards through the qualified engineers and scientists appointed for that purpose. As per the requirement of this statutes the occupier of the factories are required to ensure that amount of effluents in the water let out do not exceed the permissible limits.

However, there are no provisions relating to control of harmful substances during use, handling and transportation as well as safety precautions to be taken in order to protect workers against exposure to these substances.

The Air (Prevention and control of Pollution) Act, 1981 and the Air (Prevention and Control of Pollution) Rules, 1995.

These regulations are enacted for prevention and control of pollution in air. These are applicable to all places of work including factories covered under the Factories Act 1948. The Central and State Pollution Control Boards are the enforcing agencies. Some of the duties of these authorities include:

- grant No Objection Certificate to industries , setting standards for industrial pollution in the ambient air , monitoring, analysis and conducting investigations regarding air pollution.

The enforcement is carried out by the State Pollution Control Boards through qualified engineers and scientists. The occupiers of factories are required to ensure that amount of pollutants released in the ambient air do not exceed the permissible limits prescribed under the statutes.

However, there are no provisions relating to monitoring and control of airborne concentration of pollutants at the source as well as in the work room. The statutes also do not prescribe the precautions to be taken to protect workers against harmful airborne substance.

The Hazardous Wastes (Management and Handling) Rules, 1989

These rules are aimed at control of generation, collection, treatment, transport, import, storage, and disposal of specified hazardous wastes. These are also applicable to factories which use, handle or generate hazardous wastes. The enforcement of these rules is carried out by the State Pollution Control Boards.

Some of the duties of the enforcement authority are:

- provide authorization to units for handling hazardous waste , ensure safe handling of hazardous waste, monitor and carry out tests , identify and notify the sites for disposal. The occupiers of the factories are required to take necessary adequate steps to contain contaminants and prevent accidents and limit their consequences on human and the environment while handling hazardous wastes. They are also required to provide persons working with information, training and equipment necessary to ensure their safety.

These rules deal with only hazardous wastes as specified and hence their coverage in relation to safety and health of workers is not adequate.

SUMMARY OF RECOMMENDATIONS:

The recommendations have been made in two parts. They are: Main Recommendations and Sector Specific and recommends' for Constitution of Core Group on OSH at workplace under the Ministry of Labour for inter-Ministerial

coordination. And a coherent national policy on Occupational Safety, Health should be formulated.

Besides it requires for bringing of general legislation on occupational safety and health applicable to all workplaces in the country should be enacted. The enforcement of the provisions of this legislation will be carried out by existing machinery available at Central/State Governments.

Besides the above mentioned common recommendations, sectoral-specific recommendations are suggested for Waste Management Sector, Citizens active participation and effective coordination will all agencies concerned and NGOs is suggested. Safety Awareness Programmes may be organized for NGOs and waste collectors.

4.2.2 CENTRAL PUBLIC HEALTH AND ENVIRONMENTAL ENGINEERING ORGANISATION

The Ministry of Urban Development, Government of India, is nodal Ministry in charge of various aspects of Urban Development including Urban Water Supply and Sanitation in the Country. The Ministry formulates the policies and strategies pertaining to various aspects of Urban Development including Water Supply, Sanitation and Municipal Solid Waste Management in the Country and also provides technical and financial assistance to the States.

The Central Public Health and Environmental Engineering Organisation (CPHEEO) is Technical Wing of the Mo U D, GoI , and deals with the matters related to Urban Water Supply and Sanitation Including Solid Waste Management in the Country.

The CPHEEO was constituted under the former Ministry of Health & Family Welfare, Directorate General of Health Services (DGHS) in 1953 as per the recommendations of the Environmental Hygiene Committee to deal with Water Supply and Sanitation in the Country. In 1973-74, the CPHEEO was affiliated to the Ministry of Urban Development (erstwhile Ministry of Works & Housing). Since then, it is functioning as the technical wing of the Ministry.

As per the Constitution of India, "Water, that is to say, water supplies" falls within the legislative jurisdiction of the State Governments vide item 17 of the List II-State List under Seventh Schedule referred to in the Article 246(3) of the Constitution and States are vested with the constitutional right to plan, implement, operate and maintain water supply projects. Though water supply and sanitation is a State subject, the policies, strategies and guidelines are being provided by CPHEEO to the States & UTs Governments including Municipal Corporations / Committees. The CPHEEO plays a vital role in acts as an Advisory body at Central level to advise the concerned State agencies and Urban Local Bodies (ULBs) in implementation, operation & maintenance of urban water supply, sanitation and Solid Waste Management projects and helps to adopt latest technologies in these sub sectors.

To its credit, it has prepared and published the following Manuals, which are technical guide books for the help of field engineers: Manual on Water Supply & Treatment, Third Edition, Revised-updated, May 1999, Manual on Sewerage & Sewage Treatment, Second Edition, 1993, Manual on Municipal Solid Waste Management, 2000 and Manual on Operation and Maintenance of Water Supply systems, 2005.

So far, the Manual on Operation and Maintenance of Sewerage and Sewage Treatment systems not prepared and practiced in India.

4.2.3 MUNICIPAL WASTE WATER (MANAGEMENT AND HANDLING) RULES UNDER ENVIRONMENT (PROTECTION) ACT

The Ministry of Environment and Forest (MoEF) , Government of India, is nodal Ministry at the central level of planning and promotion and coordination of environmental programs, apart from policy formulation. A number of enforcement agencies assist the MoEF in executing assigned responsibilities.

To its tribute, it has prepared and notified several rules and regulations for controlling pollution in environment. It has brought regulations on water, waste water and even to municipal solid wastes (Management and Handling) rules, 2000.

So far, in exercise of the powers conferred by section 3, 6 and 25 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government notified comprehensive Municipal Waste Water (Management and Handling) Rules contains OSHA.

4.3 ANALYSIS OF LEGISLATIONS RELATING TO OCCUPATIONAL SAFETY AND HEALTH IN INDIA

The legislations, laws' and rules and regulations in other countries emphasis on safe management of all aspects of occupational safety health of municipal waste water disposal, solid waste and storm water. Further, there is additional aspects of safety code provisions etc.,

Enacting and Implementation of the legislation on Occupational Safety and Health Act, rules and regulations for Municipal Waste Water (Management and Handling) under EPA is the need of present day to significantly tackle the eradication of manual scavenging in municipal waste water disposal services.

However , the implementing regulations on Occupational Safety and Health rules and regulations for the essential dynamic Municipal Waste Water (Management and Handling) to be drafted and issued.

These will define safe confine entry programs to the sewer manholes and allied sewerage structures, applicable mechanical equipments for sewer cleaning criteria and principles of averting accidents, risk eradication to municipal waste water workers in progressive way.

CHAPTER 5

5. LEGISLATIVE, POLICY AND INSTITUTIONAL FRAMEWORK

5.1. LEGISLATIONS, POLICIES AND PROGRAMS FOR ERADICATION OF MANUAL SCAVENGING IN INDIA

A number of anti -discrimination statutes and positive benefit provisions exist in Indian law as safety measures for the protection of the Dalits, but the implementation and enforcement of these laws is poor.

“Untouchability” stands abolished under Article 17 and its practice in any form is forbidden and punishable under law. Special enactments have been made by the central and state governments to protect SCs and STs from all forms of exploitation. There are two important legislations related to Article 17, viz, The Protection of Civil Rights Act, 1955.

It is an irony that almost after five decades of India’s Independence; it was in the year 1993 that the Indian government passed a law to ban the inhuman and degraded practice of manual scavenging. Manual scavenging is one of the most extreme forms of caste discrimination and the State’s complicity in its continued practice is not in tune with the basic tenets of the Indian Constitution.

The initiatives and legislations on the manual scavenging in India since from Independence are tabulated below:

Table 1 : Timeline of Institutional and Legal Interventions on Manual Scavenging

Year	Intervention
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1949	Constitution of India:
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	Article 17 (Abolition of Untouchability), “Untouchability is abolished and its practice in any form is forbidden.”
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	Article 21, Guarantees right to life with human dignity Constitution of India
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	Article 25 (Right against Exploitation) “Beggar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”
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- 1949** Report of Scavengers' Living Conditions Enquiry Committee formed in State of Bombay. "Carrying of night soil on head loads should be abolished".
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- 1957** Report of the Ministry of Home Affairs on Manual Scavenging: Recommendation No. 209, "Sufficient water for drinking and washing must be supplied to scavengers." And Recommendation No. 210, "Arrangement for supply of soap should be made at place of work."
-
- 1957** Report of Scavenging Conditions Enquiry Committee formed by Ministry of Race Affairs. The practice of manual scavenging should be abolished "not later than end of the 3rd five year plan."
-
- 1968** Report of National Commission of Labor: No. 5.3, "Fair load of work should be fixed for a normal working day." and No. 6.7, "Employment of children as sweepers and scavengers should be prohibited in municipal or private service."
-
- 1968** Committee established by the National Commission on Labor to study the working and service conditions of sweepers and scavengers; and ILO's 111 recommendations were made on how to eradicate the practice.
-
- 1989** Report of the Task Force for Tackling Problems of Scavengers and Suggesting Measures to Abolish Scavenging with Particular Emphasis on Their Rehabilitation by the National Planning Commission. "The practice of manual handling of human waste (should be) abolished within the next four years."
-
- 1993** Abolition of Manual Scavenging Act enacted but no states adopt the act.
-
- 1996** Establishment of National Scheme for Liberation & Rehabilitation of Scavengers India 797,112 scavengers identified (23.6% rehabilitated, 9.3% trained) Gujarat 62,000 scavengers identified (16% rehabilitated, 1% trained)
-

The practice, along with dry latrines, was even made illegal in 1993. There are also many other policies in place, such as reserved quotas and low-interest micro-credit loans that target SCs more broadly. There is, however, no doubt that manual scavenging is still practised in many parts of India in one or more forms.

An estimated 1.3 million people are still engaged in the occupation widely in the entire country, there is the lack of political will and apathy of the State was

clearly visible when it took about four years for the central government to even notify the law in the government gazette.

Research and surveys conducted by various civil society organisations show that this inhuman practices of manual scavenging forcing a certain section of the Dalit community is still in practice in many parts of the country.

The dehumanising practice of manual scavenging is closely interlinked with untouchability. It is well known that this work is socially assigned and imposed upon certain untouchable castes of India. Manual scavenging is rooted in caste and with very few exception, all the manual scavengers are from the Scheduled Castes. Manual scavenging is thus a caste based occupation, with a large majority of them being women. The continuance of manual scavenging constitutes a gross violation of human rights and the worth of the human person and flies in the face of the Constitutional guarantee assured, in its very Preamble, of a life with dignity for every individual in the country.

Section 7A of the Protection of Civil Rights Act 1955 (added in 1976) provides that whoever compels any person on the ground of untouchability to do any scavenging shall be deemed to have enforced a disability arising out of untouchability and thus punishable with imprisonment. It was only four decades after the commencement of the Constitution that manual scavenging was specifically prohibited under the 'Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act' which was passed by Parliament in May 1993 after obtaining resolutions from the State Legislatures of Andhra Pradesh ,Goa, Karnataka, Maharashtra, Tripura and West Bengal under Article 252(1) of the Constitution .While the Act received the assent of the President in June 1993 , it took almost four years for the issue of the notification bringing the Act into force in these six States and all Union Territories in January 1997 . The remaining States were expected to adopt the Act by passing resolutions under Article 252(1); but the legislation is yet to become one of countrywide applicability. Some of the States have not adopted the law on the ground that there were no manual scavengers in the State, despite evidence to the contrary.

5.2 FAILURES OF INSTITUTIONAL FRAMEWORK ON MANUAL SCAVENGING

The Comptroller and Auditor General of India, in its 2003 audit report on the Ministry of Social Justice and Empowerments' program of eradication of manual scavenging observed certain failures and the same were extracted below:

The National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents, implemented by the Ministry of Social Justice and Empowerment since 1992 has failed to achieve its objectives even after ten years of implementation involving investments of more than Rs 600 crore.

The Scheme was undoubtedly well-intentioned but ill conceived as it failed to harness its operational parameters to the complex structure of a highly stratified society resisting occupational reform..... It failed in working out a coherent strategy for policy initiatives as it could not take advantage of an existing Law that prohibited employment of Scavengers.Absence of base-line survey, non-involvement of district development authorities, commercialisation of the assistance patterns and ruptures in the monitoring format led to a certain loss of locus..... Achievements so far can at best be described as sporadic, uncoordinated and generally poor, without the strength required for catalysing the future course.

Highlights: The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was adopted by sixteen States as of April 2002, but there was no evidence of its enforcement in any of the States. The Scheme did not even mention the existence of the Law. Lateral support to the Scheme through liberation (i.e. conversion of dry latrines into water-borne ones) of scavengers was not aligned with the progress of rehabilitation measures. Even the definition of Scavenger was not on any settled basis by the survey agencies of the States which resulted in inclusion of ineligible persons in the list of beneficiaries.

..... 3.1. Law : The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was adopted by 16 States by April 2002; it was however, not enforced in any State.

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 could not have been enacted at a more opportune time. The Scheme had just begun and it had to target a hereditary occupational structure where the user of the service was the perpetrator of the evil practice. While the provider of the service could not be uprooted from the deeply embedded customary practice without an alternative occupation, the user could be prevented from allowing the service in his own premises, thereby eliminating the occupation itself. The law that prohibited the engagement of manual scavengers, thus, could have provided a powerful instrument to the implementers of the Scheme. By adopting this Central Law, and enforcing it in right earnest, the States could have paved the way for the Scheme and liberation of scavengers would have progressed in tandem with rehabilitation measures. However, by April 2002, only sixteen States had adopted the Act. **Rajasthan** and **Delhi** are yet to adopt the Act: A close scrutiny of the provisions of the Act showed that enforcement of the Act could have an impact on the Scheme in the following areas:

- Had the Act been enforced strictly, registration of the manual scavengers and their rehabilitation would have been legally enforceable instead of leaving it to the initiatives under the Scheme.
- Had the penal provisions been invoked, all persisting cases of employment of scavengers could have been brought to book, thereby assisting the Scheme in its rehabilitation endeavour.

The Scheme suffered due to absence of linkage with the law.

The Scheme, by failing to relate itself to the law, continued to operate in a persuasive mode without the legal means to penalize violations. Ideally, it should have been reviewed after the promulgation of the Act to correlate the legal framework to the Schemes parameters.

Further the CAG observed conclusion as **“The Scheme began, and continues to remain until now, a prisoner of its own statistics. Absence of credible baseline census of targeted beneficiaries has robbed the Scheme of its objectivity.** Different sources have estimated the number differently employing ad hoc yardsticks and methods. The Scheme visualised the rehabilitation of all the 4 lakh scavengers and their dependents estimated by the Task Force in March 1991 by the end of the Eighth Plan period (1992-97). Against this, the Scheme claimed to have rehabilitated only 2.68 lakh. This did not, however, result in a reduction in the total number, as subsequent surveys conducted between 1994-95 and 2001-02 estimated the number as 7.87 lakh necessitating upward revision of the targets.

Loss of link between liberation and rehabilitation defocused the scheme. Liberation, interpreted to mean removal of the very cause and basis of manual scavenging, thereby allowing the beneficiary release from the stigmatised occupation, should have been the cornerstone of the Scheme as there could be no **rehabilitation without liberation.** Lack of correspondence between liberation and rehabilitation was vividly demonstrated by the fact that the Ministry of Social Justice and Empowerment, the nodal Ministry for the scheme claimed to have rehabilitated 4.71 lakh scavengers during 1992-2002 while the Ministries of Urban and Rural Development projected that only 0.37 lakh scavengers were liberated during the period. There was no evidence to suggest if those liberated were in fact rehabilitated.

The most serious lapse in the conceptualization and operationalisation of the scheme was its failure to employ the law that prohibited the occupation. The law could have been invoked to ensure that the condition and circumstance of occupational entrapment were not created. As a matter of fact, the law itself expected that the schemes implemented by the both the State and Central Governments would draw their strength from it. The law was rarely used.

5.3 RESULTANTS OF PROGRESSION ON POLICY FRAMEWORK

5.3.1 REPORT OF SUB-GROUP ON SAFI KARAMCHARIES

Upon the failures, responsive pro-active actions were been initiated. Accordingly Report of Sub Group on Safi Karamcharies submitted to the Chairman The Working Group on the “Empowerment of Scheduled Castes (SCs)” for the Eleventh Five-Year Plan (2007-2012) was prepared and the suggestions are extracted below.

The Preamble to the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 states;

“Whereas fraternity assuring the dignity of the individual has been enshrined in the Preamble to the Constitution...and whereas the dehumanising practice of manual scavenging of human excreta still continues in many parts of the countryand whereas it is necessary to enact a uniform legislation for the whole of India for abolishing manual scavenging by declaring employment of manual scavengers for removal of human excreta an offence and thereby ban further proliferation of dry latrines in the country “ .

However the content of the Act shows that emphasis has been placed more on sanitation rather than on the human dignity of the manual scavengers. In fact, the Act ignores the issue of human dignity mentioned in its own Preamble.

A brief reference may be made to a Public Interest Litigation (PIL) in the form of a Writ Petition filed in the Supreme Court of India in 2003 by the Safai Karmachari Andolan (a movement for the elimination of manual scavenging) and 14 other organizations and individuals. It was submitted before the Supreme Court that the existence of dry latrines in various parts of the country was entirely illegal and unconstitutional, an affront to human dignity and was in violation of the fundamental rights enshrined in the Constitution, in particular, Article 14, 17, 21 and

23. The Supreme Court was requested to issue time-bound directions to the Union of India and various States to take effective steps for the elimination of the practice of manual scavenging simultaneously with the formulation and implementation of comprehensive plans for rehabilitation of all persons employed as manual scavengers as well as for the effective implementation of Employment of Manual Scavenging and Construction of Dry Latrines (Prohibition) Act 1993. It took almost three years and strong admonitions from the apex court to secure response from the State Governments and the Central Government in the form of detailed affidavits. Many of the State Governments denied the existence of the practice of manual scavenging. Several affidavits and counter affidavits showing the existence of dry latrines and manual scavenging have been filed before the Court. The issue is still before the Supreme Court for its directions. It is unfortunate that, apart from private households, organizations of the Central Government, especially the defence establishments and Indian Railways as well as the local bodies under the State Governments such as municipal and panchayat institutions are themselves major employers of manual scavengers even at present.

It is envisioned by all that India will soon join the club of developed countries. But even after 59 years of independence there are several communities of people who are left far behind and are on the margins of development. They live in most deplorable conditions of economic backwardness and social discrimination. The Indian State has the responsibility to liberate and set such communities back on the track of development to bring them to the main stream. The neediest among these communities are Safai Karamcharis – Manual scavengers, Sewer workers and Sanitation workers. They and their dependants live helplessly entangled in the vicious circle of extreme poverty, indebtedness and addiction of alcohol. More importantly they suffer the indignities associated with the unclean occupations they are forced into by the caste based social order and custom. The State therefore should pay special attention to these communities and do its utmost to liberate them from their social conditions and improve their economic status.

Conceptually the Sub Group recognizes that 'any person employed or engaged to manually clear, carry or dispose human excreta partially or fully' come

under the purview of the term 'Safai Karmacharis', and hence people engaged in manual scavenging, sewer works and sanitation works in municipalities and gram panchayats come under its purview. The Sub Group has given considered thought to these distinctions and herewith are categorizing our recommendations separately for the three sections mentioned above.

For the persons engaged in manual scavenging: Total eradication of the practice of manual scavenging along with demolition/conversion of all dry toilets, CDLs and IDLs. Holistic liberation of persons engaged in manual scavenging with release, immediate relief and alternate and dignified rehabilitation programmes with education, skill up gradation and entrepreneur development taking the family as a unit. Integration of the families with civil society without discrimination and exclusion.

For persons engaged in sewer works: Strict implementation of all provisions under the various Labour laws in the country... Additional safety measures risky nature of their occupation. Effective welfare measures taking the family as a unit, to bring them on par with others, owing to the historical and social deprivation based on caste and descent based occupation. Technical up gradation and mechanization of the underground drainage system in the country.

For persons engaged in sanitation works: Recognize and directly recruit persons as full time sanitation workers implementing all provisions under the various Labour laws in the country. Provide them with necessary safety gears and equipments to conduct their work in a dignified manner. Effective welfare measures taking the family as a unit to bring them on par with others, owing to the historical and social deprivation based on caste and descent based occupation. Technical up gradation and mechanization to help the persons carry out the work in a dignified manner

5.3.2. NGO'S ROLE AND PIL REDRESSAL

Many number of NGO's viz., Safi Karamcharie Andoln , Rashtiya Gramiya Abhiman and human rights' activists and responsible social activists like Shri Bezwada Wilson, retired senior Indian Administrative Officers of Shri. S.R.Sankaran and Shri Harsh Mandar and others had continuously advocated and campaigned the eradication of manual scavenging in India.

During 2003 Safi Karamchry andoln along with group of campaigners made PIL in Supreme Court of India and the case is yet pending orders of decisions awaited. In the same time several other advocating NGO's, owing of rise in fatal tragic death of asphyxiation occurrences to the manual scavengers/ sewer workers filed court cases in various high courts of India against this inhuman practice remedy .

Upon mounting pressures and to reconsider of the enacted law implementations, an imperative need has been arisen. In the meanwhile the National Advisory Council considering the need made recommendations' and suggestions to the Follow-up Measures to Eradicate Manual Scavenging .

5.3.3 NATIONAL ADVISORY COUNCIL RECOMMENDATIONS

National Advisory Council

Note on Recommendation the Follow-up Measures to Eradicate Manual Scavenging

1. The NAC in its meeting of October 23, 2010, expressed its deep anguish at the official failure to eradicate 'manual scavenging', the most degrading surviving practice of untouchability in the country. This involves mostly women, but also men and even children gathering human excreta from individual or community dry toilets with bare hands, brooms or metal scrapers into wicker baskets or buckets and then carrying this on their heads, shoulders or against their hips into dumping sites

or water bodies. Others are similarly employed to clear, carry and dispose excreta from sewers, septic tanks, drains into which excreta flows and railway lines.

2. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 outlawed employing persons from manual scavenging, and government launched programmes for livelihood rehabilitation of freed manual scavengers, education of their children; and promotion of flush latrines in place of dry latrines. However, as the NAC noted in its resolution of October 23, 2010, these have not resulted in the eradication of the practice, and governments have tended to look at this as an issue of sanitation rather than human dignity as guaranteed to all citizens by the Constitution.

3. The Chairperson of the NAC, accordingly, wrote to the Prime Minister of India on 9 November, 2010, requesting the government to take necessary steps to ensure the end of this demeaning scourge in a time-bound manner. Accordingly, the matter was reviewed at the highest levels of Government. On April 29, 2011, the Secretaries of Social Justice and Empowerment, and of Housing and Urban Poverty, Government of India, made presentations about the efforts and plans of Government of India to deal with this practice. On May 9, 2011, some Members and officers of NAC met officials of the Government of India. The Prime Minister also wrote to NAC Chairperson Mrs. Sonia Gandhi on May 11, 2011, reiterating government's 'determination to completely eradicate this abominable practice in a very short time', including by making the employment of SC ST persons to handle excreta an offence under the SC ST Atrocities Act, and ensuring 'full and complete rehabilitation'.

4. While appreciating the new sense of urgency and priority accorded to the issue after the NAC resolution, NAC has the following observations and suggestions.

1. Need for a New Law

1.1 The Government of India has proposed amendments to the original Act Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, to strengthen its accountability mechanisms, widen the definition of

manual scavenging, and above all to shift the focus to human dignity from merely sanitation.

1.2 NAC supports many aspects of the revised amendments. But a major limitation of amending the law would be that it would remain a law under the state list of the Constitution. It has taken 18 years for all state legislatures to adopt the Act. There is little hope that a time bound eradication of manual scavenging in the next one or two years would be possible, if the amendments would need ratification of state legislatures once again to come into force.

1.3 A new law built on new realities and experiences gathered in the last decades, with provisions for active monitoring, redress and accountability will strongly further the momentum, which has sadly been lacking in the last 17 years since the Abolition of Manual Scavenging Act (1993) was adopted.

1.4 It is therefore recommended that the a new legislation be introduced in Parliament.

2. Legislative Competence for the revised law

2.1 Schedule VII of the Constitution of India enumerates three lists, namely the Union, State and Concurrent, from which the legislative competence for enacting legislations is derived. In its decisions, the Supreme Court has laid down principles that further clarify, whether the Union or the State, or both have the power to legislate on any given subject. First, the entries in the legislative lists must not be construed in a narrow and pedantic sense and that widest amplitude must be given to the language of these entries. Second, it applied the doctrine of 'pith and substance' to a law that covers various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment ¹.

2.2 In this regard, the Manual Scavenging and Construction of Dry Latrines (Prohibition) Act, 1993 was enacted under Entry 6 of the State List: 'Public health and sanitation; hospitals and dispensaries'. However, the intent of prohibition of

Manual Scavenging is much broader than mere 'public health and sanitation', and is inextricably linked to the Constitutional guarantee to abolish untouchability in all its practices and forms. The *raison d'être* of the Manual Scavenging (Prohibition) Act is similar to that of the Protection of Civil Liberties Act, 1955, mainly to outlaw practices of untouchability, for which the power to enact was directly derived from the Fundamental Rights & Directive Principles of State Policy. Both of these are social welfare legislations anchored in the fundamental rights enshrined in the Indian Constitution. (Articles 15, 17, 21, 23) In pith and substance, therefore, the prohibition on Manual Scavenging would fall under the following category:

- a) Article 248 read with Entry 97, List I (Union List) – Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

2.3 In addition, the Union may also derive the power to legislate under these additional categories:

- b) Entry 24, List III (Concurrent List) – Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
- c) Entry 23, List III (Concurrent List) Social Security and Social Insurance; employment and unemployment.

2.4 It must be noted, though, that it may be the more appropriate legislative practice if the Union used its residuary powers listed under option (a) to derive its legislative competence for the Manual Scavenging (Prohibition) Act. It is also important to ensure through a Statement of objects and reasons to emphasise that it is a law for "social welfare" and not a law relating to "public health" or even "labour welfare".

3. Features of the New Law

Much of the amendments proposed by the Government should be incorporated into the new law. Some other features of this new law proposed are as under:

- (i) **Definition of manual scavenging:** We agree with and welcome the revised wider definition of manual scavenging in the GOI draft: a person engaged in or employed by an individual or urban local body or any public or private agency, for manually cleaning, carrying or disposing or dealing in any other manner with human excreta in a latrine, a tank, a drain or a sewer line open spaces including railway tracks'.
But there should be different consequences of different aspects of manual scavenging: a) for those who worked manually handling human excreta in dry latrines (coming under the narrower definition of the 1993 Act), there should be immediate liberation and demolition of the latrine and the full rehabilitation package, within a short defined time frame; b) for those in other forms of manual scavenging like sewer and railway workers, there should be liberation through a longer defined time frame (five years ?). This liberation would be through introducing technical changes, which eliminates the humiliating and unsafe aspects of the livelihood. The livelihood itself is not abolished. The onus of enforcing these technical and administrative changes would lie with the hiring authority, and the Act should create direct accountability on these, and a strong monitoring mechanism.
- (ii) **Implementing Agencies:** The implementing agencies under the Act should be the District Collector and Municipal Commissioner.
- (iii) **Offences and Penalties:** There should be no further tolerance for pushing back the time frames for eradication of both types of manual scavenging; and failure to eradicate without reasonable cause beyond this should be defined as an offence by public officials, with severe penalties. But it should be clarified that manual scavengers themselves should not be punished under this Act. The offence should be investigated and heard with the same provisions as are contained in the SC & ST Atrocities Act.
- (iv) **Historical Wrong:** The preamble of the Act should acknowledge, as does the Forest Rights Act, that this law seeks to correct an enormous

centuries-old historical wrong of requiring people to manually handle human excreta because of their birth in a particular caste.

4. Plan a new survey and a system of continuous joint surveillance

4.1 The recurring experience of past official surveys of manual scavengers and dry latrines is that state governments are mostly in denial; having declared that manual scavenging has been eradicated, they reject community findings, even when backed by strong evidence. If government and community activists conduct separate surveys, it is most unlikely that they will agree on most of the findings, and the time-bound eradication of the practice will be impossible.

4.2 NAC is convinced that this can be prevented only if there is continuous system of joint surveillance, beginning with a *joint survey* by designated teams of government officials and community members. For this, the Safai Karmchari Andolan would nominate 15 persons per district. The District Collector and Municipal Commissioners would constitute a number of teams for this survey; they would nominate 2 persons from the community list to each team, and 2 officials, and each team of 4 members would jointly conduct the survey in their designated locations. This would be repeated by a rapid survey every 3 months, until full eradication is accomplished. There would also be provision for self-declaration by manual scavengers.

4.3 In constituting these joint teams in every district, care should be taken to ensure that all communities which are actually engaged in manual scavenging in that district are represented. For instance, in some districts, Dalit Muslims communities like Hela and Halalkhor undertake manual scavenging, and are often excluded from surveys and rehabilitation packages.

4.4 There should be built-in processes for transparency and participation in the survey, and provision for people to suo-moto report the existence of scavengers and dry latrines, and also for appeals when their claims are rejected.

4.5 For rehabilitation purposes, it is important to note that we will need to have data both on a) families in which one or more member is currently engaged in manual scavenging; and b) families in which one or more member was engaged in

manual scavenging since when the Act was notified in the state, or 10 years, whichever is longer.

5. Individual Rehabilitation plan:

5.1 Government of India ran a National Scheme Liberation of Scavengers (NSLRS) since 1993, replaced with a 'new and approved' scheme 'Self employment Scheme for Rehabilitation of Manual Scavengers' (SRMS). Each identified manual scavenger receives a loan from a public sector bank, and subsidy; some also receive training, Government reports that under 5 Lakhs scavengers have been assisted since 1993 with loan and subsidy under this programme.

5.2 However, several studies and reports, official and non-official, including the CAG, have identified many grave problems with this programme:

- i. The large majority of persons benefited under the programme were not actually engaged as manual scavengers.
- ii. An estimated 95% manual scavengers are women, whereas the majority of schemes and beneficiaries are men.
- iii. Many are older women, with little education, skills and experience; and a loan and subsidy enterprise programme is mostly useless for them.
- iv. There is also evidence of large-scale corruption, lack of transparency, delay, uncertainty and harassment.

5.3 In order to prevent this from recurring, it is proposed that after identification, demolition and liberation from manual scavenging, the District Collector will cause to be issued to each manual scavenger a card, which will list the person and members of her nuclear family, and her entitlements under this programme.

5.4 The rehabilitation plan for every person/family identified will have 4 components:

5.4.1 **Livelihood rehabilitation** (to be implemented by government within 3 months of identification): This will be applicable only for families in which one or more member is currently employed in manual scavenging as defined

in the 1993 Act, or was engaged in manual scavenging on the date that the 1993 Act was notified in that state.

- i. Given the past experience of corruption and harassment in loans, and the fact that most manual scavengers are women, many of whom are older and with poor literacy, the scheme should be entirely grant-based. Women should have the option of receiving a monthly pension of Rs. 2000, or an enterprise grant of up to Rs. 1 lakh, supported by training and counselling facilities.
- ii. If she is in municipal or formal employment in government, semi-government or private companies (on regular, daily wage or contract basis), the law will require that her employment is not terminated, and instead she is confirmed in regular employment in a task not connected with scavenging.
- iii. Finally, in case she chooses, she will be permitted to sponsor one daughter or son to benefit under the SRMS Scheme of MoSJE, and this application will be fast-tracked.

5.4.2 Guarantee of Priority or BPL Card (rural or urban) as may be applicable, to all families in which one or more member was engaged in manual scavenging.

5.4.3 Housing Plan. Most manual scavengers live in urban settlements of castes of manual scavengers. If persons continue to live in these colonies, they will be identified as belonging to the stigmatised manual scavenging community even after liberation from the actual vocation. Therefore HUPA should create a scheme akin to Rajiv Awas Yojana, and enable them if they choose, to access a house under in a mixed colony, and thereby escape permanently caste identification. The HUPA scheme should require Government to bear the entire cost of the EWS house.

5.4.4 Education: The education entitlement will be for all children who are in families in which one or more person is currently engaged in manual scavenging, or was so engaged on or since the date the state adopted MS 1993. It would guarantee:

- i. government funded school education, for every child of school going age.
- ii. Children would be offered alternatives of study in social welfare hostels, or other residential schools run by central and state governments.
- iii. Alternately they could choose to go to day schools (government or private) supported by a high monthly scholarship and stipend from class 1 to 12; and also
- iv. Post-matric scholarships, including for marketable modern caste-neutral vocational and computer training.

6. Survey of Dry Latrines

- 6.1 Government has linked the survey of individual latrines to the recently concluded Census 2011. However this Census consciously did not collect data on community latrines.
- 6.2 It is proposed that the same team proposed at every district suggested above conducts joint survey to a) verify the census list of dry latrines, in urban, semi-urban and rural areas; b) gap-fill for any individual dry latrines that may have been left out; and c) survey community dry latrines.
- 6.3 Once again, there should be continuous joint surveillance every 3 months until total eradication, and provision for suo-moto reporting.
- 6.4 It should be the legal duty of the District Collector to ensure that demolition of all identified individual and community dry latrines should take place within 3 months of identification, and failure to do so would be a punishable offence,

7. Sewer Workers and Railways:

For sewer workers and railway workers, liberation will come from introducing necessary technological changes which will render the occupation humane, dignified and safe, and avoid any direct human contact with excreta. The maximum time period for this to be fully accomplished should be 4 years from the date of promulgation of the new Act. the law will also guarantee that no person

who is employed at the time the Act comes into force in casual, contract or regular employment in any of these tasks, will not be terminated, and instead he will be confirmed in regular employment.

¹ *On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e on a matter included in the List belonging to the other legislature. (Kartar Singh v. State of Punjab, 1994 SCC (3) 569) Thus, while determining the legislative competence of Parliament to make a law, it should be first ascertained if the subject matter of the legislation falls in the State List under which the Parliament cannot legislate. If the law does not fall in the State List, the Parliament would have the legislative competence to pass the law by virtue of the residuary powers under Article 248 read with Entry 97 of the Union List and it would not be necessary to go into the question whether it falls under any entry in the Union List or Concurrent List. (Union of India v. H.S. Dillon, (1972) 2 S.C.R. 33; S.P. Mittal v. Union of India, (1983) 1 S.C.R. 72)*

CHAPTER 6

6. RESEARCH ANALYSIS

6.1. OCCUPATIONAL SAFETY HEALTH ACT LAW AND POLICIES FOR MANUAL SCAVENGING AND MUNICIPAL WASTE WATER WORKERS

This chapter analyses the perspective information available on the eradication of manual scavenging from the practices of national and global practices of Occupational Safety and Health acts rules and regulations.

This information is presented across six headings:

- Policy and Framework in terms of the Occupational Safety and Health in the field of Municipal Waste Water (Management and Handling) Rules and Operation and Maintenance Manual of Sewerage and Sewage treatment is lacking in Indian sanitation situation.
- Need of the New Law on eradication of manual scavenging including the proposed amendments to bring the lively municipal waste water workers – sewer workers- and classification as proposed by the report of sub –group of safi karamchries to the chairman submitted to the Chairman The Working Group on the “Empowerment of Scheduled Castes (SCs)” for the Eleventh Five-Year Plan (2007-2012).
- National Advisory Council’s Note on Recommendation of the Follow-up Measures to Eradicate Manual Scavenging made the following suggestion:

Need for Law, Legislative Competence for the revised law, Features of the New Law, Plan a new survey and a system of continuous joint surveillance, Individual rehabilitation plan, and lively hood rehabilitation, survey of latrines, sewer workers and railways.

- Non availability of comprehensive Occupational Safety and Health Act, separate Occupational Safety and Health Administration, and even the non availability of waste management workers occupation safety rules and

regulations. Presently in India, only broader outline laws on Occupational Safety and Health rules and regulations only are available.

- The policy guiding apex bodies of Central Public Health and Environmental Engineering Organisation, and MoEF lacks in bringing out manual on operation and maintenance of sewerage and sewage treatment and Municipal Waste Water (Management and Handling.)

6.2 APPROPRIATE UTILISATION OF OCCUPATIONAL SAFETY AND HEALTH ACT ON MUNICIPAL WASTE DISPOSAL

Municipal waste disposal methods in India still is adopting conservative age Old practices only. In comparisons with other technological advancements' and implementations, the Municipal waste disposal activity needs methods of safe disposal and best practices.

In the field of information technology and telecommunications achieving of “on apply of correct input, within blinks time, results of output is obtainable and utilisable “models available to the consumers of modern society owing to technological development had occurred.

All the Indian society is utilising and benefitting these modern technology achievements, whereas on contrary policies of modern sanitation practices orienting with occupational safety and health concepts is not yet emerged.

Rapid urbanisation and population growth needs best practices in municipal waste disposal. To mitigate the problem of sanitation, Indian government is proposing and implementing several sanitation measures of Total Sanitation Programs and eco –san sanitation programs.

In order to overcome the manual scavenging in municipal waste water disposal, it is appropriate and essential to utilise Occupational Safety and Health rules and regulations with the mechanised operations.

The following are some of the recommendations for the practical implementation of Occupational Safety and Health rules and regulations, and this way for the city and the nation collectively, to move towards better management of urban sanitation with effectiveness and thus, will ensure India's progress towards achieving its manual scavenging eradication.

There is no comprehensive law on occupational safety and health for municipal waste management and disposal, though the Central Government has in its various policies stressed the need to effectively implement the existing laws.

A broad insight into the existing occupational health laws in India explicably brings out the verity of non-implementation of such laws, considering the present scenario with respect to the sewer workmen's health conditions. The sewer workmen in dangerous employments are exposed to substances like obnoxious gas, putrefying organic faeces and sludge vulnerable to respiratory and other diseases including of risk of death etc., there is need to preserve the good health of sewer workmen by ensuring safe and healthy working conditions and provide prompt compensation on account of injury or occupational disease.

Enact of the occupational safety and health act and rules and regulations and Municipal Waste Water (Management and Handling) Rules will lessen the accidents and enable the sewer workers to safe against the risk of confined space entry. Thus the Municipal waste water workers will be protected from their lively occupations risks. Further this enactment will enable a intensive tool to eliminate manual scavenging in municipal wastes as the policy tool of total sanitation campaign program in rural India.

CHAPTER 7

CONCLUSION

The practice of manual scavenging continues even though clear anti scavenging legislation and multiple government schemes aimed to eliminate the practice and rehabilitate the workers. The traditional human rights advocacy intervention that aims to protect rights through judiciary and legislative channels alone has failed thus far.

The recent recommendations' of Sub -group of Safi Karmacharies and National Advisory Council are proactive steps on the eradication of manual scavenging.

The NAC and Indian government accepted their failures on the eradication of manual scavenging; also undeniably they were ready to incorporate the Historical Wrongs in the proposed new Act. The proposed new act will meets its objective on one phase as human rights issue and other phase as sanitation issue. In this regard, this issue of human right and sanitation, a thin dividing line persists and requirement of application of technological advancements are required to both.

Further To address the "Manual scavenging practice eradication" in the management and handling of Municipal waste water a clear cut comprehensive Occupational Safety and Health Rules and regulations derived from a significantly central Occupational Safety and Health ACT is needed. Also there is an inevitable need for the publication of guidelines of Manual on Operation and Maintenance of sewerage and Sewage Treatment from CPHEEO and Municipal Waste Water (Management and Handling) Rules from Ministry of Environment and Forests under Environment (Protection) Act.

Also for preparing guidelines, plan proposals, monitoring and enforcing and penalising under OSH Act, a separate administration of Occupational Safety and Health Administration like Central Public Health and Environmental Engineering

Organisation or Central Pollution Control Board with State Pollution Control Board is unavoidably required.

These central and state administrations will act as implementing, monitoring and enforcing authorities on the complete eradication of manual deployment of municipal waste disposals. This centrally drafted enact of OSHA Rules, regulations and guidelines will render the inadequacies of the safe practices of confined space entry programs, confined space entry permits, safe practices against accidents. There is no comprehensive law on occupational safety and health for municipal waste management and disposal, though the Central Government has in its various policies stressed the need to effectively implement the existing laws.

A broad insight into the existing occupational health laws in India understandably brings out the reality of non-implementation of such laws, considering the present scenario with respect to the sewer workmen's risks and health conditions. The sewer workmen in dangerous employments are exposed to substances like obnoxious gas, putrefying organic faeces and sludge vulnerable to respiratory and other skin diseases including of risk of death etc., there is need to preserve the good health of sewer workmen by ensuring safe and healthy working conditions and provide prompt compensation on account of injury or occupational disease.

The comprehensive Occupational Safety and Health policy application in Municipal Waste Disposal will definitely yield positive achievements in pragmatic manner thus leading to paradigm shift in dynamic day to day activities in Municipal Waste Water Disposal in India.

Owing to this, **"SAFETY OF MUNICIPAL WASTE WATER WORKERS - SEWER WORKERS" - will be protected and rendering of "BESTPRACTICES "can be achieved in India.**

GLOSSARY

CAG	Comptroller Of Auditor General Of India
CPHEEO	- Central Public Health and Environmental Engineering Organisation
EMSCDLA	- Employment of Manual Scavengers and Construction - of Dry Latrines (Prohibition) Act, 1993
EPA	- Environment (Protection) Act 1986
GoI	-Government of India
HSE	-Health and Safety Executive
HSWA	-Health and Safety at Work etc., Act 1974, UK
ILCS	-Integrated Low-Cost Sanitation scheme
ILO	-International Labour Organisation
MWWW	-Municipal Waste Water Workers
SW	-Sewer Workers
JnNNURM	-Jawaharlal Nehru National Urban Renewal Mission
MoEF	-Ministry of Environment and Forest
MoUD	-Ministry of Urban Development
NAC	-National Advisory Council
NSUP	-National Urban Sanitation Policy
NGO	-Non-governmental organisation
OSHA	-Occupational Safety and Health Act
PIL	-Public Interest Litigation
TSC	-Total Sanitation Campaign
ULB	-Urban Local Body
UT	-Under Takings

REFERENCES

1. Environmental Health and Safety Regulations , USA, pdf
2. Health and Safety at work etc., ACT , UK, Pdf- Wikipedia source on HSE
3. Wikipedia- manual scavenging
4. Knowledge Community on Children in India- KCCI/2008/08- Reduction of Manual scavenging through the Total Sanitation Campaign in Mordabad district: effects on social inclusive- pdf
5. India Wash Forum Bi- Monthly e- news letter- issue # 21 dce 2011- pdf
6. Steps towards the Elimination and Eradication of Manual Scavenging practice- by Ms . Vibhawari Kamble, submitted to Mr. Coen Kompier, ILO – Pdf
7. www.legalserviceindia.com/articles/occ.htm- Article by Seetha Sriraman , ILS, Pune.
8. Manual Scavenging continues – 17/7/2009 – by Phoebe Sebhotu, One World Foundation Intern , Pdf
9. Occupational health hazards in sewage and sanitary workers – Article by Shri Rajnarayan .R.Tiwari- www.ijoem.com, pdf
10. Government of India, CAG Report on Ministry Social Justice and Reforms - 2003,pdf
11. The Manual Scavenging problem: A case for the Supreme Court OF india- Samuel Permitt- pdf
12. Report of task force for tackling the problems of scavengers and suggesting measures to abolish scavenging with particular emphasis on their rehabilitation , Planning Commission, GoI, 1990-1991- PDF
13. Manual on Sewerage and Sewage Treatment, CPHEEO
14. Laws and Policies for Manual Scavengers- Sanjay Kumar Choudhry, Assistant Professor, Law, NLSIU- www.coutercurrent.org , article, 19.08.2011,pdf
15. From promise to performance: Ecological sanitation as a step towards the elimination of manual scavenging in India ,M.I.T , SEP 2006 pdf.
16. National Urban Sanitation policy

17. OSHA- Workers Right by Occupational Safety and Health Administration ,
USA – PDF
18. Eradication of inhuman practice of Manual Scavenging and comprehensive
rehabilitation of manual scavengers in India by Rashtriya Garmia Abhiyan,
pdf
19. Sanitation and Scavenging in India, Achievements’ and Challenges’- Book by
Shri bindeshwar Pathak
20. Statement and Objects and Reasons of Environment(Protection)Act, 1986
21. Report of Sub group on Safi Karmacharies submitted to chairman for
Eleventh five year plan (2007-2012), pdf
22. National Advisory Council recommantations, 2010, pdf
23. www.wikipedia.manual scavenging
24. www.wikipedia.hse.